



CALIFORNIA EMERGENCY MANAGEMENT AGENCY
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August 17, 2009

Mr. Dean Benedix
County Project Manager
San Luis Obispo County
County Government Center, Room 207
San Luis Obispo, CA 93408

SUBJECT: COMPLIANCE REVIEW REPORT
HAZARD MITIGATION GRANT PROGRAM
FEMA-1046-DR-CA, PROJECT #0157, FIPS #079-00000
CAMBRIA FLOOD CONTROL PROJECT

Dear Mr. Benedix:

The California Emergency Management Agency (CalEMA) (formerly the Governor's Office of Emergency Services (OES)) conducted a compliance field review on April 28 - 29, 2009, for the referenced grant. The purpose of the review was to determine if your organization complied with applicable laws, regulations, guidelines, and policies.

The above grant was reviewed for compliance with the administrative and fiscal requirements as outlined in the Office of Management and Budget Circulars (OMB) and the Code of Federal Regulations (CFR). Our scope included reviewing fiscal and accounting records for the grant, and your Request for Reimbursement #20 dated October 21, 2008, and its supporting documentation. CalEMA met with Dean Benedix, Will Clemens, Jennie Brunik, and Wendy Hall of the San Luis Obispo (SLO) County Department of Public Works (DPW) (the organization administering this grant), and examined its payroll records, timesheets, invoices, contract agreements, the Board of Supervisors approval of the contract agreements, contract solicitation documentation, contracting handbook, procurement policies and procedures, and the June 30, 2008 A-133 Single Audit Report. In general, the CalEMA monitors were very pleased with San Luis Obispo County DPW's documentation for this grant.

Executive Summary:

Grant Type(s): Hazard Mitigation Grant Program, FEMA-1046-DR-CA
Review Type: Compliance Field Review
Scope: Fiscal and Administrative
Review Period(s): March 1, 1998 – October 14, 2009

Findings Summary:

1. Proper certification and/or verification regarding Suspension and Debarment was not obtained or documented on subaward.
2. Subrecipient did not obtain price or rate quotations from an adequate number of qualified sources for small purchases.
3. Contracts for construction do not contain all required FEMA provisions.

Following are the detailed Findings resulting from the Compliance Field Review. Findings are discoveries that, within the context of a review process, represent operational deficiencies or errors, material program weaknesses or unacceptable program liabilities that could result in questioned grant costs, or collectively characterize a significant risk to program integrity.

FINDINGS

Finding #1: Proper certification and/or verification regarding Suspension and Debarment was not obtained or documented on subaward.

Requirement:

44 CFR Part 13, Subpart C, Section 13.35 states, "*Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."*

44 CFR Part 17 outlines the government-wide suspension and debarment requirements. 44 CFR Part 17, Appendix B (7) states, "*A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs."*

Observation:

Although it was evident that the California Suspension and Debarment list was checked for the primary contractor, there was no evidence that the County had checked the federal *Excluded Parties List System* (www.epls.gov) to ensure the *subcontractors* listed in the contract were not excluded from participation. Additionally, there was no Suspension and Debarment language contained in the contract or in the Auditor-Controller Contract Accounting and Administration Handbook distributed to contractors, nor did the contract include a separate "*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions*" statement.

Required Corrective Action:

A corrective action plan (CAP) must be submitted which describes by when and how the SLO County DPW will take steps to ensure that future award/subaward agreements funded by FEMA federal awards either: 1) incorporate the appropriate Suspension and Debarment clause as outlined in 44 CFR Part 17, Appendix B; or 2) have received verification through the Excluded Parties List System that contractors are not excluded from participation in the federal award.

Finding #2: Subrecipient did not obtain price or rate quotations from an adequate number of qualified sources for small purchases.

Requirement:

44 CFR Part 13, Subpart C, Section 13.36 (d) states, "*Methods of procurement to be followed – (1) Procurement by small purchase procedures. Such purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.*"

Observation:

The SLO County DPW's *Central Services Board Approved Policy on Contracting for Services* document, Section II (B), states that price solicitation for service contracts under \$25,000 do not require price solicitation. Section III relating to construction contracts requires: 1) no price solicitation for contracts under \$1,000; 2) one estimate for contracts between \$1,001 and \$10,000; and 3) one quotation for contracts between \$10,001 and \$30,000.

Required Corrective Action:

A CAP must be submitted which describes by when and how the SLO County DPW will take steps to ensure that the contracting policy and procedures for small purchases meets the minimum federal price or rate quotation requirement as outlined in 44 CFR Part 13, Subpart C, Section 13.36 (d).

Finding #3: Contracts for construction do not contain all required FEMA provisions.

Requirement:

44 CFR Part 13, Subpart C, Section 13.36 (i) states, "*Contract provisions. A grantee's and subgrantee's contracts must contain provision in paragraph (i) of this section.*"

Observation:

The following compliance provisions were missing from the contract with the R. Burke Corporation: 1) compliance with the Copeland "Anti-Kickback" Act; 2) compliance with the Contract Work Hours and Safety Standards Act; 3) compliance with the Clean Air Act; 4) compliance with the Clean Water Act; 5) compliance with the Environmental Protection Agency regulations; 6) compliance with mandatory standards and policies relating to the Energy Policy and Conservation Act; and 7) notice of agency patent rights, copyrights, and data rights requirements.

Required Corrective Action:

Please prepared a Corrective Action Plan that describes by when and how steps will be taken to ensure that the SLO County DPW's contracts meet the minimum federal contract language requirements in the future.

ADVISORY RECOMMENDATION(S)

Following are additional observations and Advisory Recommendations resulting from the compliance review:

- 44 CFR Part 13, Subpart C, Section 13.36 (b)(3) states, "*Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.*" For more detailed language on the code of standards of conduct, please refer to 44 CFR Part 13, Subpart C, Section 13.36 (b)(3). In order to ensure that SLO County DPW meets the minimum federal procurement standards requirement, it is recommended that they develop and maintain a written code of standards of conduct.

If the subrecipient desires to either challenge or disagree with any of the referenced Findings or Advisory Recommendations included in this report, the subrecipient must respond with their written comments to CalEMA, along with inclusive supporting documentation, to the address shown on the CalEMA letterhead, attention Local Assistance Monitoring Branch.

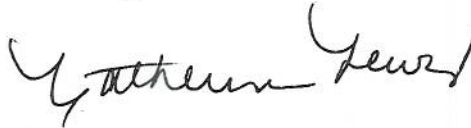
Since there are significant Findings included in this report, formal corrective action is required to ensure all issues are addressed in a timely manner. The attached document, "Subrecipient Corrective Action Procedures" provides detailed instructions for developing the CAP. The CAP should be submitted to CalEMA within 30 days from the date of this letter.

Dean Benedix
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You are encouraged to work with your assigned Regional Coordinator, Mary Montgomery or Joanne Phillips, to develop your CAP.

Thank you for the courtesy and cooperation you extended CalEMA in completing this review. If you have any questions about this letter or the enclosures, please contact me at (916) 845-8106, or catherine.lewis@oes.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Lewis", with a stylized flourish at the end.

CATHERINE LEWIS
INTERIM BRANCH CHIEF

Enclosure

cc: Glen Pridy, Deputy Director of Public Works – Engineering
San Luis Obispo County
Peggy Okabayashi, CalEMA Assistant Secretary
James Hartwig, CalEMA Hazard Mitigation Branch
Mary Montgomery, Regional Coordinator, Southern Region
Joanne Phillips, Regional Coordinator, Southern Region
Subrecipient File